

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

KEITH BELL, Ph.D.

Plaintiff,

v.

FEDERAL WAY PUBLIC SCHOOLS,  
PAUL RUSTON and DOES 1-5,

Defendants.

CIVIL ACTION NO.

**CV131620** MJP

JURY TRIAL DEMANDED

COMPLAINT

The Parties

1. Keith Bell, Ph.D. ("Bell") is an individual who maintains his primary business office and residence at 3101 Mistyglenn Circle, Austin, TX 78746, which is within this judicial district and division.

2. Upon information and belief, Federal Way Public Schools (the "District") is a school district organized under the laws of the state of Washington which maintains its primary offices at 33330 8th Ave South, Federal Way, WA, 98003.

3. Upon information and belief, Paul Ruston ("Ruston") is an individual employed by the District to serve as a teacher and athletic coach, maintains a business office at 4248 S 288th Street, Auburn, WA 98001, and is a resident of the state of Washington.

4. Upon information and belief, Does 1-5 are individuals employed by the District, maintain a business office at 4248 S 288th Street, Auburn, WA 98001, and are residents of the state of Washington.



SEALED  
JUL 28 2013

## **Jurisdiction and Venue**

5. Upon information and belief, the District serves students in the city of Federal Way, Washington and surrounding communities (including, Auburn, Washington).

6. Upon information and belief, one of the District's high schools is Thomas Jefferson High School ("Thomas Jefferson HS"). Thomas Jefferson HS maintains active athletic programs, including cross country and track and field teams that participate in distance running events. Upon information and belief, at all times pertinent hereto, Ruston was a teacher and distance running coach at Thomas Jefferson HS.

7. Upon information and belief, at all times pertinent hereto, Does 1-5 assisted Ruston in the fulfillment of his duties as a distance running coach at Thomas Jefferson HS, and assisted him with copying, adapting, distributing or publicly displaying Bell's copyrighted Essay as detailed in paragraphs 22 through 28 below, which are incorporated herein by reference.

8. At various times through at least September 22, 2010, Defendants actively engaged in the unlawful conduct detailed in paragraphs 22 through 32 below within this judicial district, which are incorporated herein by reference.

9. By virtue of the foregoing, this Court may exercise personal jurisdiction over the District, Ruston and Does 1-5.

10. This Court has subject matter jurisdiction over Plaintiffs' copyright claim (Count I) under 28 U.S.C. § 1338(a). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(a).

## GENERAL AVERMENTS

### Dr. Bell and His Sports Psychology Practice

11. Bell is an internationally recognized sports psychologist (presently retired) and sports performance consultant. He has worked as a sports psychologist with over 500 teams, including the U.S., Canadian, Australian, Hong Kong, Fiji, Cayman Islands and New Zealand Olympic and national teams.

12. In addition to his work with sports teams, Bell speaks at national and international coaching symposia. Among others, he has been a featured speaker with the American Swim Coaches Association, Australian Coaches Association, Canadian Coaches Association, the Japanese Coaches Association, and the British Swim Coaches Association.

13. Further, Bell has authored and had published 10 books and over 80 articles relating to sports psychology. He has also been a regular columnist for national swimming publications such as Swimmers, Swimmers Coach, SWIM SWIM, and Swim Texas Magazine.

14. In 1981, Bell wrote the book entitled *Winning Isn't Normal* and it was first published in 1982. The book has enjoyed substantial acclaim, distribution and publicity. A true and correct copy of selected pages from *Winning Isn't Normal* are attached as Exhibit A hereto.

15. Bell has complied with the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*, as amended, securing for himself the exclusive rights and privileges in the copyright in and to *Winning Isn't Normal*.

16. A copyright registration certificate was issued by the United States Copyright Office for *Winning Isn't Normal* on or about September 21, 1989. The Copyright registration number is TX-0002-6726-44. A true and correct copy of the Certificate of Registration is attached hereto as Exhibit B.

17. Upon information and belief, the copyright in and to *Winning Isn't Normal* is valid and subsisting.

18. *Winning Isn't Normal* contains the following essay (the "Essay") authored by Bell that captures the essence of his book's message and synthesizes into a short statement the entire contents of the book:

Winning isn't normal. That doesn't mean there's anything wrong with winning. It just isn't the norm. It is highly unusual.

Every race only has one winner. No matter how many people are entered (not to mention all those who tried and failed to make the cuts), only one person (or one relay) wins each event.

Winning is unusual. And as such, it requires unusual action.

In order to win, you must do extraordinary things. You can't just be one of the crowd. The crowd doesn't win. You have to be willing to stand out and act differently.

Your actions need to reflect unusual values and priorities. You have to value success more than others do. You have to want it more. (Now take note! Wanting it more is a decision you make and act upon — not some inherent quality or burning inner drive or inspiration!) And you have to make that value a priority.

You can't train like everyone else. You have to train more and train better.

You can't talk like everyone else. You can't think like everyone else. You can't be too willing to join the crowd, to do what is expected, to act in a socially accepted manner, to do what's "in."

You need to be willing to stand out in the crowd and consistently take exceptional action. If you want to win, you need to accept the risks and perhaps the loneliness ... because *winning isn't normal!*

19. Whether as part of *Winning Isn't Normal* or as a self-contained work in and of itself, the Essay has become well-known among sports coaches, sports psychologists, motivational speakers and others as a powerful statement on the psychological key to winning in any sporting endeavor.

20. The Essay is and has been licensed by Bell to third parties for reprint in various publications including print and online media, is and has been sold in the form of motivational posters and t-shirts, is and has been presented, used and sold by Bell in various professional seminars and symposia.

21. Bell relies upon his promotion, sale and licensing of the Essay to generate revenue and to assist him in the generation of consulting and speaking engagements.

#### **Defendants and Their Unlawful Conduct**

22. Upon information and belief, without the permission of Bell, the District through one or more of its employees including Ruston and Does 1-5, used, copied, abridged, distributed and publicly displayed verbatim or near verbatim copies of the Essay or *Winning Isn't Normal*.

23. In particular, the Essay was, upon information and belief, Defendants unlawfully used, copied, abridged, distributed and publicly displayed in the following ways:

a. Beginning at least as early as 2002 and continuing through at least September 22, 2010, the Essay was reprinted verbatim without attribution to Bell in informational packets, handbooks, handouts or the like (collectively, "Publications") printed and distributed to students and their parents at Thomas Jefferson HS; and

b. Beginning at least as early as 2003 and continuing through a date presently unknown to Bell the Essay was posted on one or more of the District's internet websites (collectively, the "District Websites") for viewing and downloading by students, parents, faculty, administration, and staff of Thomas Jefferson HS and any other persons who had access to the District Websites. A true and correct copy of one such website is attached hereto as Exhibit C;

24. In or about December, 2007, Bell learned that an employee of the District and one of Ruston's colleagues, Mr. James Roach ("Roach"), maintained a personal website (blog) related to distance running located at <http://www.jamesroach.net> ("the Roach Blog"). Roach was at that time and remains today an athletic coach at Thomas Jefferson HS. Roach posted the Essay on the Roach Blog. A true and correct copy of such posting is attached hereto as Exhibit D. At the time Roach posted the Essay on the Roach Blog, he did not have permission to do so from Bell.

25. Shortly thereafter, Bell or his designee contacted Roach and informed him that his unauthorized posting of the Essay on the Roach Blog constituted copyright infringement. Bell or his designee inquired of Roach as to where he obtained a copy of the Essay; Roach declined to reveal such source. After several communications, Bell agreed to allow Roach to maintain such posting, provided that Roach provide attribution to Bell as author of the Essay and provided a

link to the publisher of *Winning Isn't Normal*, Keel Publications. To the current knowledge of Bell, Roach complied with Bell's requirements at that time.

26. Upon information and belief, in or about December, 2007, Roach informed Ruston about the demand Roach had received from Bell or his designee, including Bell's allegation that the unauthorized copying, adaptation, distribution and public display of the Essay constituted copyright infringement.

27. In December, 2010 or January, 2011, Bell contacted Roach again concerning modifying the form in which Roach posted the Essay on the Roach Blog. While Roach initially agreed to undertake the requested modification, shortly thereafter, he unilaterally decided to remove the Essay from the Roach Blog. To the current knowledge of Bell, he did not repost the Essay after taking it down. As part of those communications, Roach informed Bell that the original source of the copy of the Essay was Ruston and that Ruston was using the Essay as part of the Publications.

28. Upon information and belief, no later than December, 2007, Ruston was put on notice that his use, copying, adaptation, distribution and public display of the Essay in the Publication and on the District Website was unauthorized and constituted copyright infringement. Despite such knowledge, Defendants did not take any action at that time to cease the infringing use of the Essay. Therefore, upon information and belief, the continued copying, adaptation, distribution and public display of the Essay in the Publication and on the District Website after such notice, constitutes willful, deliberate and knowing copyright infringement by Defendants or, in the alternative, Defendants infringing actions were the result of reckless disregard for, or willful blindness to, Bell's copyright rights.

### **COUNT I - COPYRIGHT INFRINGEMENT**

29. Bell repeats the allegations of paragraphs 1 through 28 as if fully set forth herein.

30. Bell's cause of action in Count I arises under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*, as amended, particularly 17 U.S.C. §§ 106(1)-(3) and (5), 501, and 602.

31. Upon information and belief, Defendants unlawfully copied, abridged, distributed or publicly displayed the Essay or *Winning Isn't Normal*. Such acts have been without the permission of Bell and constitute infringement of Bell's copyright in the Essay and *Winning Isn't Normal* in derogation of 17 U.S.C. §§ 106(1)-(3) and (5), 501, and 602.

32. Upon information and belief, in or about December, 2007, Defendants continued to unlawfully use, copy, abridge, distribute or publicly display the Essay with knowledge of Bell's claim of copyright in and to the Essay and *Winning Isn't Normal* and with knowledge of Bell's claim that such actions constituted copyright infringement. Accordingly, such acts have been without the permission of Bell and constitute willful infringement of Bell's copyright in the Essay and *Winning Isn't Normal* in derogation of 17 U.S.C. §§ 106(1)-(3) and (5), 501, and 602.

### **REQUEST FOR JURY TRIAL**

33. Plaintiff hereby demands that this cause be tried by a jury.

### **DEMAND FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendants and for relief including:

34. A permanent injunction enjoining Defendants against continuation of the illegal acts recited above.

35. An award of statutory damages under 17 U.S.C. § 504(c)(1) or (2) as the Court deems just.

36. An award of punitive or exemplary damages.



37. An award of costs and, if Bell engages counsel to represent him in this action, reasonable attorneys' fees.

38. An award or pre- and post-judgment interest.

39. All other relief as the Court may deem just.

Respectfully submitted,

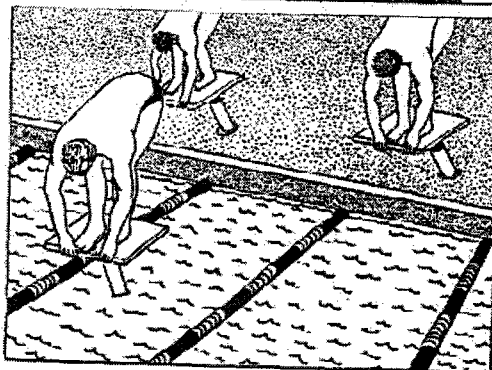
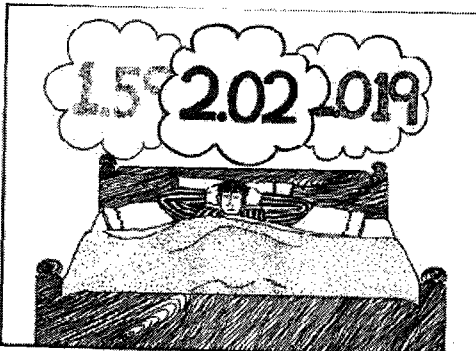
A handwritten signature in black ink, appearing to read "Keith Bell", is written over a horizontal line.

Keith Bell, Ph.D.

# EXHIBIT A

# WINNING ISN'T NORMAL

by Dr. Keith Bell



Back cover photograph  
by Kirsten Sell

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by Keith F. Bell, Ph.D.

Second printing, May 1987

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think you are one of those special people who win national championships and break world records?

Well, guess what? No one is special! The people who win are not special people. There is nothing special about the people who break world records. They are not special people — they do special things! They are just people who do special things. You can too! And you have to do special things, if you want to win.

## **Winning Isn't Normal**

Winning isn't normal. That doesn't mean there's anything wrong with winning. It just isn't the norm. It's highly unusual.

Every race only has one winner. No matter how many people are entered (not to mention all those who tried and failed to make cuts), only one person (or one relay) wins each event.

Winning is unusual. As such, it requires unusual action.

In order to win, you must do extraordinary things. You can't just be one of the crowd. The crowd doesn't win. You have to be willing to stand out and act differently.

Your actions need to reflect unusual values and priorities. You have to value success more than others do. You have to want it more. (Now, take note! Wanting it more is a decision you make and act upon — not some inherent quality or burning inner drive or inspiration!! And you have to make that value a priority.

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You can't talk like everyone else. You can't think like everyone else. You can't be too willing to join the crowd, to do what is expected, to act in a socially accepted manner, to do what's "in." You need to be willing to stand out in the crowd and consistently take exceptional action. If you want to win, you need to accept the risks and perhaps the loneliness . . . because *winning isn't normal!*

# EXHIBIT B



## CERTIFICATE OF COPYRIGHT REGISTRATION



This certificate, issued under the seal of the Copyright Office in accordance with the provisions of section 410(a) of title 17, United States Code, attests that copyright registration has been made for the work identified below. The information in this certificate has been made a part of the Copyright Office records.

*[Signature]*  
REGISTER OF COPYRIGHTS  
United States of America

FORM TX

UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

TX 2 672 844

EFFECTIVE DATE OF REGISTRATION

9 Month 21 Day 89 Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

## 1 TITLE OF THIS WORK ▼

Winning Isn't Normal

## PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

## 2 NAME OF AUTHOR ▼

Keith Frank Bell

## DATES OF BIRTH AND DEATH

Year Born 1948 Year Died ▼

Was this contribution to the work a "work made for hire"?

☐ Yes  
☒ No

## AUTHOR'S NATIONALITY OR DOMICILE

Name of Country U.S.A.  
OR Citizen of U.S.A.  
Domiciled in ▼

## WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ No  
Pseudonymous? ☐ Yes ☒ No  
If the answer to either of these questions is "Yes," see detailed instructions.NATURE OF AUTHORSHIP  
Entire Text

Briefly describe nature of the material created by this author in which copyright is claimed. ▼

## NAME OF AUTHOR ▼

## DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

☐ Yes  
☒ No

## AUTHOR'S NATIONALITY OR DOMICILE

Name of Country  
OR Citizen of U.S.A.  
Domiciled in ▼

## WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ No  
Pseudonymous? ☐ Yes ☒ No  
If the answer to either of these questions is "Yes," see detailed instructions.

## NATURE OF AUTHORSHIP

Briefly describe nature of the material created by this author in which copyright is claimed. ▼

## NAME OF AUTHOR ▼

## DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?

☐ Yes  
☒ No

## AUTHOR'S NATIONALITY OR DOMICILE

Name of Country  
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Domiciled in ▼

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Anonymous? ☐ Yes ☒ No  
Pseudonymous? ☐ Yes ☒ No  
If the answer to either of these questions is "Yes," see detailed instructions.

## NATURE OF AUTHORSHIP

Briefly describe nature of the material created by this author in which copyright is claimed. ▼

## 3 YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

1981

## DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information ONLY if this work has been published.

Month Day Year

February 3 1982

United States of America

## 4 COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Dr. Keith Bell  
3101 Mistyglan Circle  
Austin, Texas 787461598 Winford Ave.  
Ventura, CA 93004

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

## APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

REMITTANCE NUMBER AND DATE

## MORE ON BACK ▶

- Complete all applicable spaces (numbers 5-11) on the reverse side of this page.
- See detailed instructions.
- Sign the form at line 10.

DO NOT WRITE HERE

Page 1 of 2 pages

# EXHIBIT C





## Winning: The will to win must be exceeded by the will to prepare to win

"Winning" Remember one thing... winning isn't normal. That doesn't mean there is anything wrong with winning. It just isn't normal. It's highly unusual.

Every race only has one winner. No matter how many people are entered, only one person or team wins each event. Winning is unusual. So it requires unusual action. In order to win, you must do extraordinary things. You can't just be one of the crowd. The crowd doesn't win. You have to be willing to stand out and act differently.

Your actions need to reflect unusual values and priorities. You have to value success more than others do. You have to want it more! Remember, wanting more is a decision YOU make and act upon. You have to make your values a top priority. You can't train like everyone else. You can't be like everyone else. You have to train more, be willing to be different.

You can't talk like everyone else. You can't think like everyone else. You can't be too willing to join the crowd, to do what is expected, to act in a social manner, to do what's "in". You must be constantly willing to stand out in the crowd and constantly take exception and action. If you want to win and be part of a winning team, you need to accept the risk and perhaps the loneliness that will come with it.

Excerpt from "Running to the Edge" by Steve Moniz

# EXHIBIT D

# Winning

**BACK ::**

Winning isn't normal. It must be achieved by the will  
of the individual.

"Winning" Remember one thing... winning isn't normal. That doesn't mean there is anything wrong with winning. It just isn't the norm. It is highly unusual.

Every race only has one winner. No matter how many people are entered, only one person or team wins each event. Winning is unusual. So it requires unusual action. In order to win, you must do extraordinary things. You can't just be one of the crowd. The crowd doesn't win. You have to be willing to stand out and act differently.

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Excerpted from Dr. Keith Bell's "Winning Isn't Normal"

**Click here** to purchase "Winning Isn't Normal" as well as Dr. Keith Bell's other books.